

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 446/ 2021 (S.B.)

1. Dr. Vijaykumar Mahadeorao Gedam,
aged 70 years, Occ. Retired,
R/o 53, Agney Layout Khamla,
Nagpur 44002.
2. Dr. Ramesh V. Dubewar,
aged 68 years, Occ. Retired,
R/o Sankat Mochan Road,
Yavatmal.
3. Dr. Ashok N. Panbude,
aged 71 years, Occ. Retired,
R/o Panbude Hospital Katol,
Tah. Katol, Dist. Nagpur.
4. Dr. Deoraj Chandusingh Chauhan,
aged 70 years, Occ. Retired,
R/o 79/38 Varad Residency,
Near Swami Samarth Mandir,
Opp. Hotel Oberoi Savedi,
Ahmednagar - 414003.
5. Dr. Ashok Dattatraya Gundawar,
aged 69 years, Occ. Retired,
R/o 37-Agnirath Sankul,
Shyam Nagar, Manish Nagar,
Nagpur 440037.
6. Dr. Baburao Hawasuji Shambharkar,
aged 70 years, Occ. Retired,
R/o Mahalaxmi Nagar-1,
Manewada Road, Near Allahabad Bank,
Nagpur - 440024.
7. Dr. Arun Bhimraoji Amle,
aged 68 years, Occ. Retired,
R/o 117, Vijay Apartment,
Pande Layout, Khamla,
Nagpur 440008.

8. Dr. Anant Vithobaji Dasarwar,
aged 68 years, Occ. Retired,
R/o A/18, Gajanan Nagar,
Near Omkar Nagar Water Tank,
Manewada Ring Road,
Nagpur 440027.
9. Dr. Ravindra Shamraoji Demapure,
aged 72 years, Occ. Retired,
R/o At Post Salikhed (dam),
Tq. Kelapur, Dist. Yavatmal.
10. Dr. Arun Wamanrao Rathod,
aged 69 years, Occ. Retired,
R/o Sai Nursing Home,
Snehnagar Dhanora Road,
Gadchiroli-442605.
11. Dr. Damodhar Kashiramji Gedam,
aged 68 years, Occ. Retired,
R/o Sundaram Apartment,
Flat No.101, Rd. No.05,
Vishvakarma Nagar, Nagpur.
12. Dr. Chandrashekhar Vitthalrao Raut,
aged 70 years, Occ. Retired,
R/o 24 Shri Vitthal Building Rathi Nagar,
Amravati-444603.
13. Dr. Satishchandra Mansaram Jaiswal,
aged 68 years, Occ. Retired,
R/o Jaihind Housing Society,
Shyamnagar Somalwada,
Nagpur-440037.
14. Dr. Ruplal Dayaramji Lanjewar,
aged 69 years, Occ. Retired,
R/o Plot No.14, Bandu Soni Layout,
Parsodi Ringroad,
Nagpur 22.
15. Dr. Madanmohan Ratanlalji Yadav,
aged 70 years, Occ. Retired,
R/o Flat No. 201, Plot No. 31,

Tirumala Enclave,
K.T. Nagar, Katol Road,
Nagpur - 440013.

16. Dr. Purnachandrababu Namdeobabu Khedikar,
aged 72 years, Occ. Retired,
R/o 623, New Subhedar Layout,
Nagpur 440023.
17. Dr. Subhash Laxman Tayde,
aged 68 years, Occ. Retired,
R/o Pratapnagar Ward No.1,
Wardha 442001.
18. Dr. Narsing Daulatrao Zade,
aged 71 years, Occ. Retired,
R/o 17, Parijat Public Co-op Housing Society,
Atrey Layout, Nagpur - 440022.
19. Dr. Vijay Namdeorao Kargirwar,
aged 71 years, Occ. Retired,
R/o 117, Vijay Apartment,
Pande Layout, Khamla,
Nagpur 440009.
20. Dr. Bhaurao Rajaram Amte,
aged 68 years, Occ. Retired,
R/o 16, New Urvela Colony,
Kotwalnagar, Ring Road,
Nagpur 440015.
21. Dr. Tryambak Bhaurao Kalmegh,
aged 69 years, Occ. Retired,
R/o 73, Genediwal Layout,
Camp.
22. Dr. Manohar Premlalji Pashine,
aged 69 years, Occ. Retired,
R/o Pyramid City-6, Tower-C,
Flat 103, Besa Pipla Road,
Nagpur - 440036.
23. Dr. Suresh Sakharam Munde,
aged 72 years, Occ. Retired,

R/o Tiwari Chowk, Sankatmochan Road,
Yavatmal.

24. Dr. Haridas Zingaji Gajbhiye,
aged 71 years, Occ. Retired,
R/o 29, Milind Nagar, Khamla,
Nagpur 440025

Applicants.

Versus

1. The State of Maharashtra,
Through Its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai-32
2. The Commissioner,
Public Health Services,
Arogya Bhavan, Saint Georges Hospital Compound,
P. D'melo Road, Mumbai.
3. The Joint Director of Health Services
(Finance & Administration),
Arogya Bhavan, Saint Georges Hospital Compound,
P. D'melo Road, Mumbai..
4. The Deputy Director of Health Services,
Akola Division, Akola.
5. The Deputy Director of Health Services,
Nagpur Division, Nagpur having its office Mata Kacheri,
Shraddhanand Peth, Nagpur.

Respondents

Shri S.P.Palshikar, Id. Advocate for the applicants.

Shri S.A.Deo, Id. C.P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 10th July, 2023.

Judgment is pronounced on 17th July, 2023.

Heard Shri S.P.Palshikar, ld. counsel for the applicants and Shri S.A.Deo, ld. C.P.O. for the Respondents.

2. The applicants, all of whom admittedly retired before 14.12.2011, pray that benefits of G.Rs. dated 14.12.2011 (A-3) and 19.11.2012 (A-4) be extended to them.

3. Details of each of the applicants are at A-1. The issue which goes to the root of the matter is whether benefits of G.Rs. dated 14.12.2011 and 19.11.2012 can be extended even to those who had retired before 14.12.2011.

4. Relevant portion of G.R. dated 14.12.2011 is as under:-

शासन निर्णय :- महाराष्ट्र वैद्यकीय व आरोग्य सेवा या संवर्गातील वैद्यकीय अधिकारी (वेतनश्रेणी १५६००-३९१०० + ग्रेड पे ५४००) या पदावर नियुक्ती झाल्यानंतर पदव्युत्तर पदवीका धारकास तीन अतिरिक्त वेतनवाढी व पदव्युत्तर पदवी धारकास सहा अतिरिक्त वेतनवाढी मंजूर करण्यात याव्यात. सदर शासन निर्णय निर्गमित झाल्याच्या दिनांकापासून या प्रोत्साहनवर वेतनवाढी लागू करण्यात याव्यात.

5. Relevant portion of G.R. dated 19.11.2012 reads as under:-

"२. कार्यरत विशेषज्ञ वैद्यकीय अधिकाऱ्यांनाही अतिरिक्त वेतनवाढीचा लाभ अनुज्ञेय राहिल किंवा कसे" या बाबत सदर शासन निर्णयाच्या व्याप्ती संदर्भात अधिक स्पष्टीकरण करण्याची बाब शासनाच्या विचाराधीन होती. आता, या शासन निर्णयान्वये प्रस्तूत बाब स्पष्ट करण्यात येत आहे की, आरोग्य सेवेतील महाराष्ट्र वैद्यकीय व आरोग्य सेवा, वैद्यकीय अधिकारी गट-अ (वेतनश्रेणी, रु. १५६००-३९१०० + ग्रेड पे रु.५४००) या संवर्गात दि.१४.१२.२०११ रोजी कार्यरत असलेल्या व त्यानंतर वरीष्ठ पदावर पदोन्नत झालेल्या तसेच अश्वसित प्रगती योजनेअंतर्गत वरीष्ठ पदाची वेतनश्रेणी प्राप्त असलेल्या सार्वजनिक आरोग्य विभाग शासन अधिसूचना क्र. आरटीआर-१०९१/प्र.क्र.२२६/सेवा-३, दि.३०.१०.२००० मधील नियम ३ (क) खालील परंतूकानुसार सदर पदासाठी आवश्यक किमान शैक्षणिक अर्हतेशिवाय वैद्यक शास्त्रातील (उच्चतर शैक्षणिक अर्हता) संविधिक विद्यापीठाची चिकित्सा विशेषज्ञाची पदव्युत्तर पदवी / पदव्युत्तर पदविका अर्हताधारक वैद्यकीय अधिका-यांनाही संदर्भ क्र.१ येथील शासन निर्णय दि.१४.१२.२०११ अनुसार अनुज्ञेय करण्यात आलेल्या प्रोत्साहनात्मक वेतनवाढीचा लाभ अनुज्ञेय राहिल.

6. In addition to the aforesaid G.Rs. the applicants have also relied on G.R. dated 03.05.2021 (A-8). Relevant portion of this G.R. is as under:-

7. शासन निर्णय :- महाराष्ट्र वैद्यकीय व आरोग्य सेवा, गट-अ वेतन मॅट्रीक्स मधील वेतन स्तर एस-२३ : ६७७००-२०८७०० (६ व्या वेतन आयोगानुसार वेतनश्रेणी रु. १५६००-३९१०० ग्रेड पे रु. ६६००) मधील व त्यापेक्षा अधिक वेतनश्रेणीमधील जिल्हा शल्यचिकित्सक संवर्ग, पोलीस शल्यचिकित्सक, जिल्हा आरोग्य अधिकारी संवर्ग, विशेषज्ञ संवर्ग, उपसंचालक, सहसंचालक, अतिरिक्त संचालक व संचालक, आरोग्य सेवा या पदावरील पदव्युत्तर पदविका व पदव्युत्तर पदवी शैक्षणिक अर्हताधारण करणाऱ्या अधिकाऱ्यांना (सेवानिवृत्त अधिकाऱ्यांसह) दि. २०/८/२०१४ ऐवजी दि. १४/१२/२०११ पासून अनुक्रमे ३ व ६ अतिरिक्त प्रोत्साहनात्मक वेतनवाढी मंजूर करण्यात येत आहेत.

7. The applicants have also relied on the Judgments of this Tribunal as well as the Hon'ble Bombay High Court (Annexures A-5, A-6 & A-7). In the Judgement at A-5 this Tribunal observed that the

applicants were admittedly in service when G.R. dated 14.12.2011 was issued. In para no. 9 this Tribunal observed:-

9. Admittedly in the present case, all the applicants were in service when the first G.R. dated 14.12.2011 was issued by the Govt of Maharashtra and subsequent G.Rs i.e. dated 19.12.2012 and 28.8.2014 are in the form of clarification.

In para 10 the Tribunal adverted to the following observations made in O.A. No. 635/2013:-

10. This Tribunal has observed in the said judgment as under-

The plain reading of the aforesaid two G.Rs clearly shows that whatever benefit was to be given as per G.Rs dated 14.12.2011 and 19.11.2012 was to be given w.e.f. 14.12.2011. Thus, benefit of both the G.Rs have been made applicable to those eligible Medical Officers who were in service on 14.12.2011 or who joined service thereafter. This has caused injustice on the applicants. The applicants were already in service prior to issuance of the G.R. and, therefore, they did not get the benefit. Because of this anomaly, the Medical Officers who were appointed and were qualified for getting benefit of G.RS dated 14.12.2011 and 19.11.2012 are

getting more salary than the applicants, though the applicants are senior in the cadre.

The very purpose of the said G.R. dated 20.8.2014 is to remove anomaly in respect of senior officers like the applicants. However, the said G.R. is not made applicable with retrospective effect i.e. from 14.12.2014 and, therefore, the applicants are not getting the benefit of G.R. dated 14.12.2011 and anomaly still remains that the Junior Medical Officers who are appointed on or after 14.12.2011 are getting more pay than the applicants and, therefore, the very purpose of issuing G.R. dated 20.8.2014 has been frustrated and, therefore, we are of the opinion that it was necessary to make this G.R. dated 20.8.2014 applicable retrospectively i.e. w.e.f. 14.12.2011.

11. From the aforesaid observation, it will be clear that the cases of the applicants are very much covered by the G.R. dated 20.8.2014 and the said G.R. is applicable w.e.f. 14.12.2011.

8. Annexure-6 is the Judgement dated 07.02.2020 of the Bombay High Court in W.P. No. 5487/2018. In this rulings it is observed:-

“7. The Tribunal has considered that the benefit as was sought to be extended as per the Government Resolution dated 14.12.2011 and 19.11.2012 was to be w.e.f. 14.12.2011. The benefit of these Government Resolutions was made applicable to the eligible Medical Officers in service on 14.12.2011, or who joined service thereafter. The present respondents were already in the said cadre prior to Government Resolution dated 14.12.2011 and as such, the literal reading of the Government Resolution caused injustice to these respondents in a way the salaries of the persons, who were appointed on 14.12.2011, and thereafter, in the same cadre as the petitioners already working was more than the respondents herein. The Government realized its mistake and issued the Government Resolution dated 20th August, 2014.”

It is further observed:-

“8. It has been observed by the Tribunal that the intent and purpose of the Government Resolution dated 20" August, 2014 was to remove the anomaly. The Government Resolution dated 20th August, 2014 was made applicable from the date of the Government Resolution and not with the retrospective effect. In view of that, the present respondents were not getting the benefit of Government Resolution dated 14.12.2011. For the interregnum period i.e. between the Government Resolution dated

14.12.2011 and 14.12.2014, these respondents though were seniors, were getting less salaries than their juniors. The very object and the purpose of bringing out the Government Resolution dated 20th August, 2014 was to do away with the disparity of the seniors getting less pay than their juniors. When the Government Resolution was to correct the mistake, then the same will have to be from the date, the disparity exist.”

By relying on the concluding portion of the aforequoted observations it was submitted by Shri S.P.Palshikar, Id. Counsel for the applicants that the applicants cannot be deprived of the benefits flowing from the G.Rs. only on the ground that they had retired before 14.12.2011 because such interpretation would defeat the purpose of removal of disparity.

9. By Judgement and order dated 11.03.2020 (A-7) in W.P. No. 8230/2018 the Bombay High Court, by relying on the Judgement in W.P.No. 5487/2018, confirmed the order passed by this Tribunal in O.A.No. 635/2013 which was relied upon subsequently by the Tribunal while deciding O.A. No. 541/2016 by Judgement dated 03.10.2017 (A-5).

10. It was submitted by Advocate Shri Palshikar that in G.R. dated 03.05.2021 it was specifically mentioned that benefit of G.R. dated 14.12.2011 shall be extended to retired employees as well and hence, the applicants cannot be deprived of the same only on the ground that they

had retired before 14.12.2011. In reply, it was submitted by ld. C.P.O. that G.R. dated 19.11.2012 makes it quite clear that the benefits of G.R. dated 14.12.2011 could be extended only to those who were in service on that date and thus those who had retired before that date were not entitled to get the benefits. Clear wording of G.R. dated 19.11.2012 fully supports this submission of the ld. C.P.O.. It is apparent that G.R. dated 03.05.2021 is clarificatory in nature and because of the following issuing a clarification had become necessary:-

३) सार्वजनिक आरोग्य विभाग, शासन निर्णय क्रमांक-वेतन- १५१४/प्र.क्र.

३८५/१४सेवा-२, दि.२०.०८.२०१४

४) मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई खंडपीठ औरंगाबाद यांचे दि.

१३/१२/२०१६ रोजीचे आदेश

५) मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई खंडपीठ, नागपूर यांचे दि.

३/१०/२०१७ रोजीचे आदेश

६) मा. उच्च न्यायालय मुंबई खंडपीठ, औरंगाबाद यांचे दि.७.२.२०२० रोजीचे

आदेश

(७) मा. उच्च न्यायालय मुंबई खंडपीठ, नागपूर यांचे दि. ११.३.२०२० रोजीचे
आदेश

11. The applicants have also relied on a Circular dated 28.02.2017 (A-11) issued by Law and Judiciary Department of Government of Maharashtra. This Circular refers to the following:-

"2. The Hon'ble Tribunal, in Para 8 of aforesaid Judgment, has observed as under:-

"If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply."

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. The Hon'ble Supreme Court in the case of State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava reported in 2015 (1) SCC 347 has laid down similar principle, thus:

"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently".

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court."

In reply, it was submitted by the Id. C.P.O. that two distinct categories cannot be treated equally. It was submitted that in the instant case the employees who had retired before 14.12.2011, and those who were in service on that day essentially belong to distinct categories and hence benefits extendable to those who were in service on that date cannot, by applying principle of parity, be extended to those who had retired before that date. There is merit in this submission. Clear wordings of all the G.Rs. unmistakably leads to the conclusion that

benefits of G.R. dated 14.12.2011 were not extendable to those who were not in service on that date.

12. To their rejoinder the applicants have attached cases of retired employees to whom benefits of G.R. dated 14.12.2011 were extended. All these employees, unlike the applicants, were admittedly in service on 14.12.2011. Therefore, these instances will not help the applicants.

13. Discussion made hereinabove will show that on merits the applicants do not have a case.

14. The respondents tried to resist the claim of the applicants also on the ground of limitation. It is apparent that what the applicants tried to agitate, though unsuccessfully, was a continuing cause of action. Hence, contention of the respondents that the O.A. was barred by limitation cannot be accepted. However, since the O.A. lacks merit, **it is dismissed with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Dated :-17/07/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 17/07/2023.
and pronounced on

Uploaded on : 18/07/2023.